

**Montgomery Township Board of Health Ordinance 2017-02
xand Electronic Smoking Devices to Under-Age Individuals**

Section One. Chapter BH:IIIA Non-Vending Machine Tobacco Sales and Self-Service Cigarette and Tobacco Product Displays, Renamed and Amended.

Chapter BH:IIIA, is hereby renamed and replaced in its entirety as follows:

CHAPTER BH:IIIA MEASURES TO PREVENT THE SALE OF TOBACCO AND ELECTRONIC SMOKING DEVICES TO UNDER-AGE INDIVIDUALS AND LICENSING OF RETAIL ELECTRONIC SMOKING DEVICE ESTABLISHMENTS

BH:3A-1 FINDINGS AND DETERMINATIONS.

The Montgomery Township Board of Health hereby finds and determines as follows:

- a. The Surgeon General of the United States has found that tobacco, nicotine and electronic smoking devices pose danger to health and wellbeing, and are unsafe. The Surgeon General of the United States has found that most adult smokers started smoking when they were adolescents. Further, the Surgeon General has found that electronic smoking devices pose a significant health risk for youth.
- b. Community-wide efforts that include use-prevention, mass media campaigns and enforcement of minors' access laws are successful in reducing adolescent use of tobacco and electronic smoking devices.
- c. The State of New Jersey has banned the sale or furnishing of cigarettes, electronic smoking devices, or tobacco in any form to any individual under the age of twenty-one (21) pursuant to N.J.S.A. 2A:170-51.1 et seq.
- d. In order to ensure that electronic smoking devices are not being sold to under-age individuals, the Board of Health deems it appropriate to license the establishments where these products are sold.
- e. The licensing by local authorities of establishments that sell electronic smoking devices is permitted by the State of New Jersey.
- f. By virtue of the powers granted to it by the N.J.S.A. 26:3-2 et seq., the Board of Health of the Township of Montgomery is authorized to enact ordinances consistent with the laws of the State of New Jersey as it may deem necessary and proper for the protection of persons and for the preservation of the public health, safety and welfare of the Township and its inhabitants.

BH:3A-2 DEFINITIONS.

a. *Electronic smoking device* shall mean an electronic or other powered device that can be used to deliver nicotine or other substances to the person inhaling from the device, including but not limited to, electronic cigarette, cigar, cigarillo or pipe, or any cartridge or other component of the device or related product including but not limited to any substances used in such devices, such as liquids or powders.

b. *Enforcement Officer* shall mean (1) the Montgomery Township Health Officer and/or authorized representative; or (2) any Montgomery Township Police Officer.

c. *Board of Health* shall mean the Montgomery Township Board of Health.

d. *Health Department* shall mean the Montgomery Township Health Department and may be referred to in this chapter as the "Department."

e. *Health Officer* shall mean the Administrative Officer of the Montgomery Township Health Department, and/or authorized representative.

f. *Nicotine delivery product* shall mean any product that is designed to deliver nicotine or vapor, including, but not limited to, what are commonly known as "e-cigarettes" or other types of electronic smoking devices, or any cartridge or other component of such device, or related products including but not limited to any substances used in such devices, such as liquids or powders or other forms of tobacco, but excluding United States Food and Drug Administration approved nicotine patches or nicotine chewing gum.

g. *Person* shall mean an individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

h. *Retail electronic smoking device establishment* shall mean a physical establishment, duly licensed by the Board of Health, that sells, offers for sale, gives, distributes or furnishes electronic smoking devices designed for consumption through inhalation.

i. *Tobacco* shall mean any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

j. *Tobacco retailer* shall mean any person or entity that operates a store, stand, booth, concession or place at which sales of tobacco are made to purchasers for consumption or use.

BH:3A-3 IDENTIFICATION REQUIRED.

Any person selling tobacco, nicotine delivery products or electronic smoking devices shall verify by means of government-issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco, nicotine containing products or electronic smoking device is younger than 21 years of age. No person shall sell tobacco, nicotine delivery products or electronic smoking devices to a person less than 21 years of age based on a note or any form of communication from any person.

BH:3A-4 PROHIBITION OF UNDER AGE PERSONS SELLING ELECTRONIC SMOKING DEVICES, NICOTINE DELIVERY PRODUCTS OR TOBACCO PRODUCTS

No person or retail electronic smoking device establishment engaged or involved in the sale of electronic smoking devices, nicotine delivery products or tobacco products shall allow, suffer or permit any person under the age of twenty-one (21) to be involved in the sale or furnishing of tobacco products.

BH:3A-5 SELF-SERVICE DISPLAY OF ELECTRONIC SMOKING DEVICES, NICOTINE DELIVERY PRODUCTS AND TOBACCO PRODUCTS PROHIBITED.

Self-service displays for electronic smoking devices, nicotine delivery products or tobacco products are prohibited in the Township of Montgomery.

BH: 3A-6. LICENSE REQUIRED FOR RETAIL SALE OF ELECTRONIC SMOKING DEVICES; FEES.

- No person shall conduct, maintain or operate a retail electronic smoking device establishment without first obtaining from the Montgomery Board of Health a license to do so.
- No itinerant establishments or vendors shall be permitted to obtain an electronic smoking device establishment license.
- The fees collected for the license shall be used to fund the administration of this chapter, and the development and maintenance of a Board of Health age of sale enforcement program and other smoking cessation, prevention and control programs. Fees in accordance with the following schedule shall be paid before any license required in this chapter shall be issued:

Annual electronic smoking device establishment license fee:
Six hundred dollars (\$600) for the initial annual license and three hundred dollars (\$300) per year for each renewal license thereafter.

License fees will not be prorated for periods of fewer than twelve months.

- Licenses issued under the provisions of this chapter, unless forfeited to or revoked by the Board of Health, shall expire annually on the 31st day of January each year or whenever the licensed establishment is no longer operating as a retail electronic smoking device establishment, whichever occurs first. Renewal applications are to be filed on or before January 31 each year.
- No license is transferrable by sale or otherwise; a license is valid only for the specific premises and retail electronic smoking device establishment listed thereon.
- Such license shall be posted in a conspicuous place in the retail electronic smoking device establishment.
- All licensing fees shall be paid to the Township of Montgomery.

BH: 3A-7. REQUIREMENTS AND PROHIBITIONS.

- Licensed retail electronic smoking device establishments shall conspicuously post and reasonably maintain signs having a minimum size of six inches by eight inches where electronic smoking devices are displayed and at all check-out counters notifying customers that proof of age is required to purchase such products.
- No person or retailer selling tobacco, nicotine delivery products or electronic smoking devices shall allow an employee to sell or distribute such products until the employee receives Health Department approved training on this Chapter of the Montgomery Board of Health Code, and has signed a statement that the employee understands such Code. Copies of the relevant code and the form statements will be supplied by the Health Department and the signed original statement shall be filed with the Health Department and a copy shall be kept on file by the retailer and made available for review by the Health Officer or designee.

BH:3A- 8 ENFORCEMENT.

- a. Whenever the Enforcement Officer or designee reasonably believes there exists a violation of this chapter, such Officer or designee may issue a summons and complaint not later than ninety (90) days after discovery of the alleged violation. The complaint shall be written and shall state with reasonable particularity the nature of the violation, including reference to the section of this chapter alleged to have been violated. The complaint shall be hand delivered or sent by certified mail to the alleged violator.
- b. The Enforcement Officer or designee, or any other person charged with enforcement of this chapter, after giving proper identification, may inspect any

matter, thing, premises, place, person, record, vehicle, incident, or event as necessary.

- c. It shall be unlawful for any person to molest or otherwise obstruct the Enforcement Officer or designee in the performance of duties under this ordinance, and such Enforcement Officer or designee may request the assistance of the Montgomery Township Police Department or other peace officer when necessary to execute official duties in a manner prescribed by law.
- d. Citizens may bring complaints against violators of this chapter.

BH:3A- 9 SEVERABILITY.

- a. If any section or subsection of this chapter is declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such section or subsection shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections or subsections of this chapter.
- b. This chapter shall be liberally construed for the protection of the health, safety, and welfare of the people of Montgomery Township.

BH:3A- 10 VIOLATIONS AND PENALTIES.

- a. Any person who shall violate the provisions of this chapter shall, upon conviction, be liable for a civil penalty of two hundred fifty (\$250.00) dollars for the first violation, five hundred (\$500.00) dollars for the second violation and one thousand (\$1,000.00) dollars for the third and each subsequent violation. In addition, upon the recommendation of the Board of Health, following a hearing by the Board of Health, the Health Department may suspend, or after a subsequent violation, revoke, the license of a retail electronic smoking device establishment issued under this ordinance.
- b. The Board of Health may suspend the retail electronic smoking device establishment license of any person convicted of a violation of this chapter for a period of not more than three (3) days, pursuant to the authority of the Board of Health to license and regulate retail electronic smoking device establishments as provided by this chapter. A suspension may be imposed for each separate violation.